

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AN THAI, Derivatively on Behalf of
LORDSTOWN MOTORS CORP.,

Plaintiff,

v.

STEPHEN S. BURNS, PHIL RICHARD
SCHMIDT, JULIO C. RODRIGUEZ, ANGELA
STRAND BOYDSTON, SHANE BROWN,
MICHAEL FABIAN, KEITH A. FELDMAN,
MICHAEL D. GATES, DAVID T.
HAMAMOTO, JUDITH A. HANNAWAY,
STEVEN R. HASH, MICKEY W. KOWITZ,
DARREN POST, JANE REISS, ANDREW C.
RICHARDSON, MARTIN J. RUCIDLO,
DALE G. SPENCER, JOHN VO, AND MARK
A. WALSH,

Defendants,

and

LORDSTOWN MOTORS CORP., a Delaware
corporation,

Nominal Defendant.

Case No.: 4:21-cv-01267

Judge: Patricia A. Gaughan

JOINT STIPULATION AND ORDER REGARDING SCHEDULING

An Thai (“Plaintiff”), who purports to bring claims derivatively on behalf of Lordstown Motors Corp. (“Lordstown”), and Stephen S. Burns, Phil Richard Schmidt, Julio C. Rodriguez, Angela Strand Boydston, Shane Brown, Michael Fabian, Keith A. Feldman, Michael D. Gates, David T. Hamamoto, Judith Hannaway, Steven R. Hash, Mickey W. Kowitz, Darren Post, Jane Reiss, Andrew C. Richardson, Martin J. Rucidlo, Dale G. Spencer, John Vo, and Mark A. Walsh (“Individual Defendants”) and Lordstown, Nominal Defendant, (collectively, the “Defendants”) and together with Plaintiff (collectively, the “Parties”) jointly submit this Stipulation Regarding Scheduling, and in support thereof state as follows:

WHEREAS, on June 30, 2021, Plaintiff filed this shareholder derivative action (“Derivative Action”) asserting claims purportedly on behalf of Lordstown against the Individual Defendants, who are certain current and/or former executive officers and directors of Lordstown and/or DiamondPeak Holdings Corp.;

WHEREAS, on August 11, 2021, Plaintiff filed an application for entry of default against Lordstown pursuant to Federal Rule of Civil Procedure Rule 55(a);

WHEREAS, on September 13, 2021, Lordstown filed a motion to enter a scheduling order and deny the application for entry of default;

WHEREAS, on September 20, 2021, Plaintiff filed an unopposed motion for an extension to respond to Lordstown’s motion to enter a scheduling order and deny the application for entry of default;

WHEREAS, on September 21, 2021, the Court entered an order granting Plaintiff’s unopposed motion for an extension;

WHEREFORE, IT IS STIPULATED AND AGREED by the Parties, through their undersigned counsel of record, as follows:

1. Defendants hereby acknowledge and accept service of the complaint filed in this Derivative Action, preserving all defenses and objections to the complaint including, but not limited to, the Court's jurisdiction and venue, but waiving only any objections to insufficient process or insufficient service of process.

2. The Derivative Action shall be stayed until the date ("Termination Date") that the Court enters an order that grants or denies in part or in full defendants' anticipated motion to dismiss in the related securities class action also pending in this Court and styled *Rico v. Lordstown Motors Corp., et al.*, Case No. 4:21-cv-616 ("Securities Action").

3. Within sixty (60) days of the Termination Date, Defendants shall file a motion to stay and/or motion to dismiss or otherwise respond to the operative complaint in the Derivative Action.

4. In the event that Defendants file a motion to stay and/or motion to dismiss, Plaintiff shall file a response to the motion(s) within sixty (60) days thereafter, to which response, Defendants shall reply within thirty (30) days thereafter.

5. In the event that within sixty (60) days of the Termination Date, Defendants file a motion to stay but do not file a motion to dismiss, and in the event that the motion to stay is denied, Defendants shall have sixty (60) days from the date the Court enters the order denying such motion to stay to answer, move to dismiss, or otherwise respond to the complaint; in the event that Defendants file a motion to dismiss, Plaintiff shall file a response to the motion within sixty (60) days thereafter, to which response, Defendants shall reply within thirty (30) days thereafter.

6. Plaintiff hereby withdraws the August 11, 2021 application for entry of default, and Lordstown hereby withdraws the September 13, 2021 motion to enter a scheduling order and deny the application for entry of default. Should any additional actions be required to effectuate the

withdrawal of the foregoing application by Plaintiff or the foregoing motion by Lordstown, the Parties shall cooperate in taking such actions promptly. If default is entered, the Parties shall make a joint motion to set aside the default.

7. Without waiving any defenses or objections, in the event that Defendants choose to file a motion to transfer this Derivative Action, Defendants shall not do so until after this Court's ruling on a motion to dismiss filed by Defendants in the Derivative Action or until after Defendants have otherwise responded to the operative complaint in the Derivative Action.

8. Defendants shall provide Plaintiff with reasonable advance notice of any planned mediation with plaintiffs in the Securities Action, and/or the related derivative action pending in the U.S.D.C for the District of Delaware, styled *In re Lordstown Motors Corp. Shareholder Derivative Litigation*, Case No. 1:21-cv-604 ("Delaware Action"), and/or any derivative matter related to this Derivative Action, and shall include Plaintiff in this Derivative Action in any such mediation.

9. After the Termination Date, in the event that the Delaware Action is stayed, whether by way of an agreement or a contested motion, Plaintiff in this Derivative Action will agree to stay the Derivative Action for the same duration as that of the stay of the Delaware Action.

10. In the event that the Delaware Action is stayed, whether by way of an agreement or a contested motion, if there are any terms pertaining to such stay of the Delaware Action, whether or not such terms are part of a filing with the court in the Delaware Action, that provide plaintiffs in the Delaware Action with greater rights than the rights provided to Plaintiff in this Derivative Action as set forth herein, Defendants shall promptly provide Plaintiff in this Derivative Action with notice of the terms of the stay of the Delaware Action, and Defendants shall provide to

Plaintiff in this Derivative Action the same rights as provided to plaintiffs in the Delaware Action, which rights shall be deemed incorporated by reference herein.

11. During any period of time that this Derivative Action is stayed, Plaintiff may amend the operative complaint in the Derivative Action.

12. During any period of time that this Derivative Action is stayed, Defendants shall provide Plaintiff in this Derivative Action the same written discovery materials, if any, production of documents, if any, and deposition transcripts, if any, that Defendants provide to any plaintiffs in the Delaware Action, subject to entry of an appropriate protective order in this Derivative Action and to the extent permitted by any applicable protective order entered in the Delaware Action.

**ELFVIN, KLINGSHIRN, ROYER &
TORCH, LLC**

By: /s/ David N. Truman

David N. Truman (0082347)

david@ekrtlaw.com

Stuart G. Torch (0079667)

stuart@ekrtlaw.com

Christina M. Royer (0073695)

chris@ekrtlaw.com

4700 Rockside Road, Suite 530

Independence, OH 44131

216.382.2500 (voice)

216.381.0250 (facsimile)

THE BROWN LAW FIRM, P.C.

Timothy Brown (NY4301495)

767 Third Avenue, Suite 2501

New York, NY 10017

Telephone: (516) 922-5427

Facsimile: (516) 344-6204

Email: tbrown@thebrownlawfirm.net

Counsel for Plaintiff

BAKER & HOSTETLER LLP

By: /s/ Douglas W. Greene

Douglas W. Greene
Email: dgreene@bakerlaw.com
999 Third Avenue, Suite 3900
Seattle, WA 9814
Telephone: 206.332.1380
Facsimile: 206.624.7317

Douglas L. Shively
Email: dshively@bakerlaw.com
Key Tower, 127 Public Square, Suite 2000
Cleveland, OH 44114
Telephone: 216.621.0200
Facsimile: 216.696.0740

*Counsel for Nominal Defendant Lordstown
Motors Corp., and Individual Defendants
Stephen S. Burns, Phil Richard Schmidt, Julio
C. Rodriguez, Angela Strand Boydston, Shane
Brown, Michael Fabian, Keith A. Feldman,
Michael D. Gates, David T. Hamamoto,
Judith A. Hannaway, Steven R. Hash, Mickey
W. Kowitz, Darren Post, Jane Reiss, Andrew
C. Richardson, Martin J. Rucidlo, Dale G.
Spencer, John Vo, and Mark A. Walsh*

SULLIVAN & CROMWELL LLP

By: /s/

Laura Kabler Oswell (*pro hac vice*
application forthcoming)
Email: oswelll@sullcrom.com
1870 Embarcadero Rd.
Palo Alto, CA 94303
Telephone: (650) 461-5600
Facsimile: (650) 461-5700

*Counsel for Individual Defendants Judith A.
Hannaway, Steven R. Hash, Andrew C.
Richardson, and Mark A. Walsh*

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SO ORDERED this 21st day of October, 2021.

/s/ Patricia A. Gaughan

The Honorable Judge Patricia Gaughan